

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) DR. ROBERT ZOELLNER)
(2) CLAY CLARK,)
(3) JAMES J. DECRISTOFARO, ESQ.,)
(4) AARON A. ANTIS,)
(5) DEBBIE L. ANTIS,)
(6) STEPHAN N. CURRINGTON, and)
(7) JASON DANE MALIK BEASLEY,)

Plaintiffs,)

vs.)

Case No. 20-CV-410-TCK-FHM

(1) MAYOR GEORGE THERON BYNUM IV,)
(2) BRUCE DART,)
(3) THE TULSA CITY COUNCIL,)
(4) THE CITY OF TULSA, and)
(5) THE TULSA DEPARTMENT OF)
HEALTH,)

Defendants.)

CITY OF TULSA'S MOTION TO STRIKE PLAINTIFFS' AMENDED COMPLAINT

COMES NOW Defendant City of Tulsa and respectfully requests this Court enter an Order striking Plaintiffs' *First Amended Complaint For Declaratory Relief and Damages* [Doc. No. 18] as Plaintiffs have failed to comply with Federal Rule of Civil Procedure 15. In support of its Motion, the City would show the Court the following:

1. On August 17, 2020 the Plaintiffs filed the present suit against Mayor GT Bynum, Dr. Bruce Dart, the Tulsa City Council, the City of Tulsa, and the Tulsa Department of Health. On or before September 9, 2020 all Defendants filed motions to dismiss. [Doc. Nos. 10, 11, 14, 15, 17]

2. On September 14, 2020, after all parties had filed responsive pleadings, the Plaintiffs' filed their *First Amended Complaint For Declaratory Relief and Damages* [Doc. No.

18]. Plaintiffs did not first obtain written consent of Defense counsel or seek leave of this Court before filing the Amended Complaint.

3. Federal Rule of Civil Procedure 15 provides that a Plaintiff may amend its pleading as a matter of course within 21 days of serving it or until responsive pleadings have been filed, whichever is earlier. Fed. R. Civ. P. 15 (a)(1); See also *U.S. ex rel. Precision Co. v. Koch Indus., Inc.*, 31 F.3d 1015, 1018-1019 (10th Cir. 1994). However, once responsive pleadings have been filed by the Defendants, the Plaintiffs can only amend their Complaint by either: (1) obtaining the written consent of the Defendants or (2) seeking leave of Court to do so. Fed. R. Civ. P. 15 (a)(1)(2).

4. In this case, the Plaintiffs' amendment was clearly filed after the responsive pleadings of the Defendants without first obtaining leave of Court or consent of the Defendants and thus was filed in violation of the requirements of Federal Rule 15. As such, Plaintiffs' Amended Complaint should be stricken.

WHEREFORE, Defendant City of Tulsa respectfully requests this Court enter an Order striking Plaintiffs' Amended Complaint as Plaintiffs failed to first obtain the written consent of the Defendants or seek leave of Court to file an Amended Complaint as is required by Federal Rule of Civil Procedure 15.

Respectfully submitted,

CITY OF TULSA, OKLAHOMA
a municipal corporation

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants (names only are sufficient):

I hereby certify that on the 15th day of September 2020, I served the same document by:

 X U. S. Postal Service In Person Delivery

 Courier Service E-Mail

on the following, who are not registered participants of the ECF system:

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